IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9430 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

AMRUTBHAI GORDHANBHAI SUTHAR

Versus

MOHANBHAI RANCHHODBHAI VAGHELA

Appearance:

MR JITENDRA M PATEL for Petitioner

MR PJ VYAS for Respondent No.1-5

MR LR PUJARI, ASSISTANT GOVERNMENT PLEADER for Respondent No. 6

RULE SERVED for Respondent No. 7

CORAM : MR.JUSTICE M.C.PATEL

Date of decision: 23/03/2000

ORAL JUDGEMENT

1. This petition under Article 226 and 227 of the

Constitution arises out of the proceedings under Section 84C of the Bombay Tenancy and Agricultural Lands Act, 1948 under the following circumstances.

2. The petitioner and the deceased Respondent No.8 purchased land bearing Block No.151 situated in the sim of village Kudasan, Taluka and District Gandhinagar by registered sale deed dated 26.3.1982 for Rs.1,95,000/from the original owner - Respondent No. 1 to 5. Mutation entry in the revenue record was made on 06.09.1982 and it was certified on 25.11.1985. On 27.03.1989, Mohanbhai Ranchhodbhai Vaghela, one of the co-owners of the land made an application to the Collector stating that they had sold the land in 1982-83 because of certain circumstances and if they get back the land, they were prepared to pay the consideration back. The Mamlatdar initiated proceedings under 84-C of the Tenancy Act on the ground that the sale was in breach of the provisions of the Act and by his order dated 21.08.1990 he held the sale to be invalid and ordered the land to be vested in the Government. The petitioner preferred an appeal to the Deputy Collector who by his order dated 10.08.1992 set aside the order of the Mamlatdar and remanded the matter for fresh decision after serving notices on all parties. On remand, the Mamlatdar by his order dated 12.03.1993 held that the sale was not contrary to the provisions of the Tenancy Act and ordered the proceedings to be dropped. However, the Deputy Collector issued a notice to the parties in exercise of suo motto powers but ultimately by his order dated 24.08.1993 after hearing the parties, he upheld the order of the Mamlatdar and withdrew the notice. Against the said order of the Deputy Collector confirming the order of the Mamlatdar, two Revision Applications were filed before the Gujarat Revenue Tribunal, one by the Government and the other by the original owners of the land.

3. The Revenue Tribunal by its judgement and order dated 30.07.1999 allowed the said Revision Applications partly and remanded the matter to the Mamlatdar to arrive at a fresh decision on the issues indicated in para 8 of the judgement.

4. It is against the said judgement and order of the Revenue Tribunal that the present petition is filed by the petitioners.

5. On behalf of the petitioners, a number of contentions have been advanced. It is contended that the powers under Section 84-C cannot be exercised beyond reasonable period. It is also submitted that the petitioner was an agriculturist and the sale was valid. It is also contended that the Revision Applications filed by the respondents were time barred. Apart from these contentions, a grievance was also made that on the date of the hearing before the Revenue Tribunal, the petitioner's advocate could not remain present and even though the petitioner who was personally present and requested the Tribunal to adjourn the case as his lawyer was unable to come due to unavoidable circumstances and tried to give an application for adjournment, he was not

allowed to submit the application and the Revision Application was heard in the absence of his advocate. The Tribunal in para 6 of its judgement has stated that the petitioner's advocate was not present and the hearing was started and the petitioner who was present could not make any submissions. According to the petitioners, there were already 22 adjournments in the case and during the entire period of two years, he and his advocate had always remained personally present practically on all dates of hearing. The petitioners have also produced the copy of the roznama to show the various dates of adjournment. It does not appear that the petitioner was trying to delay the hearing by giving repeated applications for adjournment and in the circumstances, the Tribunal could have acceded to the request for adjournment by the petitioner when his advocate was not present. Written arguments were submitted on behalf of the petitioner and though the Tribunal refers to this fact, it appears that all the submissions made in the written arguments have not been taken into consideration by the Tribunal. The Tribunal has not dealt with the contention that the proceedings could not have been initiated beyond reasonable period. In the circumstances, it appears that the petitioner did not have a fair opportunity of putting his case before the Tribunal and all the contentions which were raised in the written arguments have not been considered. In my opinion, the proper course would be to set aside the

impugned judgement and order of the Tribunal and direct the Tribunal to hear and decide the Revision Applications again after giving an opportunity to all the parties. The petition is therefore allowed. The impugned judgement and order dated 30.07.1999 passed by the Gujarat Revenue Tribunal in Revision Applications No.50 of 1994 and 1092 of 1994 is quashed and set aside and the Tribunal is directed to hear the Revision Applications after giving an opportunity of hearing to the parties. I have not made any observations on merits and all contentions sought to be raised by the parties are kept open. Rule made absolute accordingly. No order as to costs.

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